IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 11229 of 2007(J)

OS.226/2006 of I ADDL.M.C.,TRIVANDRUM

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PETITIONER:

P.GOPALAN NADAR, AGED 51 YEARS,
RESIDING AT T.C.49/867, MUDAVANMUGAL WARD,
THIRUMALA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.HARIKUMAR
SRI.K.RAJESH KANNAN

RESPONDENTS:

D.PREMALATHA, D/O.PADMAKSHI,
AGED 37 YEARS, RESIDING AT T.C.19/746-1,
MUDAVANMUGAL WARD, THIRUMALA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SMT.PREEJA. P.VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.226/2006 DT.16.2.2006

EXT.P2: -DO- OF THE WRITTEN STATEMENT CUM COUNTER CLAIM

EXT.P3: COPY OF THE WRITTEN STATEMENT TO THE COUNTERCLAIM DT. 8.8.2006

EXT.P4: -DO- OF THE AMENDMENT APPLICATION I.A. 9545/06

EXT.P5: -DO- OF THE OBJECTION TO THE AMENDMENT PETITION FILED BY THE PLAINTIFF

EXT.P6: -DO- OF THE ORDER DT. 27/1/2007

EXT.P7: -DO- OF THE COMMISSION APPLICATION I.A. 9034/2006

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 11229 OF 2007 J

Dated this the 20th July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the learned I Additional Munsiff, Thiruvananthapuram in I.A.9545/06. The said application was one for amendment of the written statement whereby the defendant wanted to incorporate a date regarding the construction made by the plaintiff in his property. The other side opposed it on the ground that there was a plaint, written statement, a counter claim and a replication and when the plaintiff specifically pleaded in the replication that he made the construction ten years before, the defendant wanted to amend his written statement by incorporating a prayer for introducing a date of construction. As rightly found out by the court below if such a pleading is allowed to be incorporated it may prejudicially affect the accrued right of one of the parties. Therefore, I do not want to interfere with the decision rendered by the court below but at the same time when there is a statement in the replication regarding the period of construction it becomes a subject matter of dispute and the defendant will be always at liberty to prove his case on the date of construction. So, even when a pleading regarding the date,

the matter has to be resolved by the court in the light of the contentions in the replication. Therefore, with these observations the writ petition is dismissed. It is made clear that when the plaintiff has got a contention regarding the limitation that has also to be specifically considered by the court.

M.N.KRISHNAN
Judge

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